

REMARKS/ARGUMENTS

Upon entry of this amendment, newly added Claims 34-53 would remain in this application. Claims 1-33 have been canceled.

New claim 34 is based on prior claim 17 and editorially clarifies that the soy-containing cheese product comprises deflavored soy material and at least one of natural cheese or cream (see, e.g., instant specification, Examples 12, 13, 14). The recitation in new independent Claim 34 regarding the relative amounts of deflavored soy protein and natural cheese or cream, which is also included in new independent Claims 48 and 51, is supported in the original specification (e.g., Examples 12-14, tables at pages 25-27, see indicated percent amounts of "Cream" or "Natural Cheese" relative to that of "Deflavored Soy Protein Concentrate" or "Soy Material").

As set forth in the instant specification (see page 15, line 30), all percentages described in the specification as filed are by "weight" unless noted otherwise. Accordingly, to the extent any of the current amendments recite an amount or amounts, they clarify that the gravimetric basis is by "weight".

New Claims 35-38 and 42-46 are supported by claims 18-21, 25, 26, and 29-31, respectively, of record.

New claim 39 is supported in the original specification (e.g., Example 12 and page 25, line 3).

New claims 40, 41, 50, and 53 are supported in the original specification (e.g., page 25, lines 28-29 and page 26, line 4).

New claim 47 is supported in the original specification (e.g., page 26, lines 26-27).

New claim 49 is supported by claim 19 of record.

New Claim 51 is supported by claim 22 of record and Examples 13-14 of the present specification.

New claim 52 is supported in the original specification (e.g., page 28, lines 4-5).

No new matter has been introduced.

Reply to Claim Rejection under 35 U.S.C. § 112, 2nd Paragraph

Claims 17-33 have been rejected under 35 U.S.C. 112, second paragraph, for indefiniteness.

The Office Action is understood to question the meaning of the claim terminology "natural ... dairy cheese base composition" or "process dairy cheese base composition" recited in prior claims 17-33.

Applicants explain that the prior introduction of the "dairy" qualification in the claim terminology of interest of claim 17 was merely intended to emphasize the distinction from casein-free materials. It has been omitted in new claims 34-53 to simplify the language and avoid any possible confusion.

Referring to the currently used terminology in new claim 34, "natural cheese" has a commonly understood general meaning in the art as referring to unripened or ripened cheeses made by coagulating milk proteins (casein). E.g., see the concurrently cited publicly-accessible brochure of the National Dairy Council (2000), entitled "CHEESE".

As technically understood, soybeans *per se* are not a source of casein, unlike dairy milk.

Thus, soy cheese analogs *per se* and the like would not qualify as a "natural cheese" as that term is generally and commonly understood by persons in the art.

Also, the claim term "natural" should be properly read in conjunction with its object ("cheese"). Persons of ordinary skill would recognize the meaning of "natural cheese." Furthermore, the above-noted well-known meaning of the claim term "natural cheese" does not necessarily depend on any 100% "natural" ingredient criterion, nor does the instant specification require such a special meaning. Applicant is entitled to be his own lexicographer.

Applicants also point out that the fact that some dependent claims may refer to "high amounts of soy protein" is not inconsistent with their "soy-containing cheese product" antecedent recited in claim 34. As can be appreciated, the "natural cheese" recited in claim 34 is merely one of multiple ingredients of the "soy-containing cheese product."

In view of the above amendments and remarks, Applicants kindly request reconsideration and withdrawal of this rejection.

Reply to New Claim Rejection under 35 U.S.C. § 103(a)

Applicants acknowledge with appreciation the withdrawal of the prior rejections based on Youngquist and Peng.

Claims 17-33 have been rejected under 35 U.S.C. § 103(a) as being obvious over Goodnight, Jr. et al. (U.S. Pat. No. 4,091,120) taken together with Lehnhardt et al. (U.S. Pat. No. 4,435,438).

The present claims are directed to soy-containing cheese products comprising a unique deflavored soy protein, due to its method of manufacture, and at least one of natural cheese or dairy cream in an amount by weight percent greater than that of the deflavored soy protein.

Goodnight, Jr. et al. nowhere mention the term "cheese," much less "natural cheese" or "cream".

As an additional difference from the present invention, Goodnight, Jr. et al. (e.g., see col. 7, lines 38) fail to teach or appreciate the importance of maintaining the aqueous composition containing solubilized soy material at a pH of about 9 to about 12 during its ultrafiltration. Consequently, the quality of the deflavored soy product obtained via Goodnight, Jr. et al.'s described process would not be expected to be as advantageous as that of the present invention (see, e.g., page 11, lines 18-20 and Example 1; and commonly assigned U.S. Pat. Appln. Publ. No. 2004/0161525 A1, Example 14).

Therefore, a product incorporating the deflavored soy protein of Goodnight, Jr. et al. also would be expected to be at variance from that of the present invention in significant manner(s).

Regarding the secondary reference relied upon in the Patent Office's rejection, Applicants point out that Lehnhardt et al. nowhere describe products containing "natural cheese" or "cream," much less in combination with deflavored soy protein.

In fact, Lehnhardt et al. fail to teach or suggest anything about soy-containing cheese products based on compatible combinations of deflavored soy materials and natural cheese or dairy cream.

Also, Lehnhardt et al. also fail to disclose deflavored soy protein, much less the improved quality variety obtained as the ultrafiltered (while maintained at about pH 9-12) solubilized soy protein material that is present in the soy-containing cheese product of the present invention (but not products of Lehnhardt et al. nor Goodnight, Jr. et al.).

The Office Action references Examples 4-5 and col. 11, lines 23-41 of Lehnhardt et al. as purportedly disclosing "[i]t is notoriously well known to include soy protein in dairy based cheese composition."

However, based on Applicants' review, Lehnhardt et al.'s Example 4 (which is the only working example of the "imitation cheese" provided in that reference) fails to describe a natural cheese or cream ingredient, nor the presence of such ingredients in an amount by weight percent greater than the soy protein (which, again, is not even a "deflavored" type as disclosed by Lehnhardt et al.).

Lehnhardt et al. refers to a sodium or calcium caseinate ingredient in the above-referenced Example 4 formulation and col. 11, lines 29-30 thereof. Caseinates are known to be soluble salts of acid casein; however, they are not natural cheese or dairy cream as those terms are understood in the art.

Therefore, Lehnhardt et al.'s imitation cheese is significantly different from the presently claimed soy-containing cheese in numerous important respects.

Also, Lehnhardt et al. compare the slicing/grating and melt/flow properties of their "gelled isolate" used in their imitation cheese formulation to "natural cheeses," showing the patentees' own recognition that their imitation cheese and components thereof were different from natural cheese (see col. 4, lines 49-51; col. 5, lines 15-18; col. 12, lines 48-53).

Moreover, in response to the reference to "Velveeta" cheese made in the Office Action (page 3), Applicants kindly request evidence be made of record by the Patent Office to support any contention taken that Lehnhardt et al. describe a "Velveeta" type cheese which contains natural cheese or cream and in an amount greater than that of a deflavored soy protein co-ingredient.

None of the additional *product* features recited in new claims 35-53 appear to be taught or suggested by the newly relied upon references in the most recent Office Action, and they do not appear to be addressed in the current Office Action relative to any prior claims of record that may have recited similar features.

In view of at least the above, Applicants submit that a prima facie case of obviousness can not be properly established against any of claims 34-53 based on the combination of Goodnight, Jr. et al. and Lehnhardt et al., and accordingly, this rejection should be withdrawn.

In view of the above, it is believed that this application is in condition for allowance, and notice of such is respectfully requested.

If the Examiner believes that a teleconference would be useful in expediting the prosecution of this application, the official is kindly invited to contact Applicants' undersigned representative of record.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

Date: August 31, 2006

By: /Ramon R. Hoch/
Ramon R. Hoch, Reg. #34108

Direct Correspondence to:

Customer No. 48940

120 South LaSalle Street
Suite 1600
Chicago, Illinois 60603-3406
Telephone: (312) 577-7000
Facsimile: (312) 577-7007